

CONFORMED COPY

CREDIT NUMBER 3425 KE

Development Credit Agreement

(Emergency Power Supply Project)

between

REPUBLIC OF KENYA

and

INTERNATIONAL DEVELOPMENT ASSOCIATION

Dated October 27, 2000

CREDIT NUMBER 3425 KE

DEVELOPMENT CREDIT AGREEMENT

AGREEMENT, dated October 27, 2000, between REPUBLIC OF KENYA (the Borrower) and INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association).

WHEREAS (A) the Borrower, having satisfied itself as to the feasibility and priority of the project described in Schedule 2 to this Agreement (the Project), has requested the Association to assist in the financing of the Project;

(B) the Borrower has requested the Association to provide assistance to finance the costs of an emergency plan for the restoration of electricity supply to near normal levels following the acute shortages caused by drought in the last three consecutive rain seasons;

(C) part of the Project will be carried out in part by Kenya Electricity Generating Company Limited (KenGen) with the Borrower's assistance and, as part of such assistance, the Borrower will make part of the proceeds of the credit provided for in Article II of this Agreement (the Credit) available to KenGen, as set forth in this

Agreement; and

WHEREAS the Association has agreed, on the basis, inter alia, of the foregoing, to extend the Credit to the Borrower upon the terms and conditions set forth in this Agreement and in the Project Agreement of even date herewith among the Association, KenGen and KPLC;

NOW THEREFORE the parties hereto hereby agree as follows:

ARTICLE I

General Conditions; Definitions

Section 1.01. The "General Conditions Applicable to Development Credit Agreements" of the Association, dated January 1, 1985 (as amended through October 6, 1999), with the modifications set forth below (the General Conditions), constitute an integral part of this Agreement:

(a) A new paragraph (12) is added to Section 2.01 to read as set forth below, and the existing paragraphs (12) through (14) of said Section are accordingly renumbered as paragraphs (13) through (15):

"12. 'Participating Country' means any country that the Association determines meets the requirements set forth in Section 11 of Resolution No. 194 of the Board of Governors of the Association, adopted on April 8, 1999; and 'Participating Countries' means, collectively, all such countries." ; and

(b) The second sentence of Section 5.01 is modified to read:

"Except as the Borrower and the Association shall otherwise agree, no withdrawals shall be made: (a) on account of expenditures in the territories of any country which is not a Participating Country or for goods produced in, or services supplied from, such territories; or (b) for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Association, is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations."

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

(a) "Contractual Implementation Framework" means the set of agreements entered into or to be entered into among the Borrower, IPPs, KenGen, and KPLC to facilitate the production of electricity by IPPs, the sale of the electricity generated through the IPPs to final consumers, and the collection of associated revenues and remittance of net revenues by KPLC into the Escrow Account, and the use of such revenues under escrow arrangements. This framework includes: (1) the Capacity Purchase Agreement between Aggreko UK Limited and Government of Kenya, dated August 7, 2000; (2) the Capacity Purchase Agreement between Cummins Power Generation Limited and Government of Kenya, dated August 7, 2000; (3) the Capacity Purchase Agreement between Deutz UK Limited and Government of Kenya, dated August 10, 2000; (4) the Support Services Agreement between Kenya Electricity Generating Company Limited and The Kenya Power and Lighting Company Limited and Aggreko UK Limited, dated August 7, 2000; (5) the Support Services Agreement between Kenya Electricity Generating Company Limited and The Kenya Power and Lighting Company Limited and Cummins Power Generation Limited, dated August 7, 2000; (6) the Support Services Agreement between Kenya Electricity Generating Company Limited and The Kenya Power and Lighting Company Limited and Deutz UK limited, dated August 10, 2000; (7) the Supplemental Power Purchase Agreement to be entered into between Kenya Electricity

Generating Company Limited and The Kenya Power and Lighting Company Limited; (8) the Agreement on Revenue and Escrow Account to be entered into between the Government of Kenya and KPLC; and (9) the Capacity Lease Agreement to be entered into between the Government of Kenya and KenGen;

(b) "EECC" means "Emergency Electricity Coordinating Committee", an administrative committee, established by the Borrower on August 2, 2000 pursuant to Legal Notice Number 4865;

(c) "EPTT" means "Emergency Power Technical Team", a team established by the Borrower on August 2, 2000 pursuant to Legal Notice Number 4866;

(d) "Escrow Account" means the account in Kenya Shillings to be opened pursuant to Section 6.01 (b) of this Agreement in a local commercial bank, acceptable to the Association, for the purpose of holding the collections from KPLC consumers on account of power sales from IPPs under the Project;

(e) "KenGen" means "Kenya Electricity Generating Company Limited", a limited liability company incorporated and operating under the laws of the Borrower;

(f) "KPLC" means the "Kenya Power and Lighting Company Limited", a limited liability company incorporated and operating under the laws of the Borrower;

(g) "IPP" or "IPPs" means "Independent Power Producer" or "Independent Power Producers", namely, collectively, Aggreko UK Limited; Cummins Power Generation Limited; and Deutz UK Limited, which are companies contracted by the Borrower to provide generating capacity under the Contractual Implementation Framework;

(h) "Project Agreement" means the agreement among the Association and KenGen and KPLC of even date herewith, as the same may be amended from time to time, and such term includes all schedules and agreements supplemental to the Project Agreement;

(i) "Project Month" means the thirty-day period beginning from the Effective Date and ending thirty days thereafter (the First Project Month), and any thirty-day period beginning at the end of the First Project Month, or at the end of subsequent Project Months;

(j) "Project Quarter" means the three-month period beginning from the Effective Date and ending three months thereafter (the First Project Quarter), and any three-month period beginning at the end of the First Project Quarter, or at the end of subsequent Project Quarters;

(k) "Special Account(s)" means the account(s) referred to in Section 2.02 (b) of this Agreement; and

(l) "Subsidiary Financing Agreement" means the agreement to be entered into between the Borrower and KenGen pursuant to Section 3.01 (c) of this Agreement, as the same may be amended from time to time, and such term includes all schedules to the Subsidiary Financing Agreement.

ARTICLE II

The Credit

Section 2.01. The Association agrees to lend to the Borrower, on the terms and conditions set forth or referred to in the Development Credit Agreement, an amount in various currencies equivalent to fifty five million one hundred thousand Special Drawing Rights (SDR 55,100,000).

Section 2.02. (a) The amount of the Credit may be withdrawn from the Credit Account in accordance with the provisions of Schedule 1 to this Agreement for expenditures made (or, if the Association shall so agree, to be made) in respect of the reasonable cost of goods required for the Project described in Schedule 2 to this Agreement and to be financed out of the proceeds of the Credit.

(b) The Borrower may, for the purposes of the Project, open and maintain in US dollars two special deposit accounts in a commercial bank on terms and conditions satisfactory to the Association, including appropriate protection against set-off, seizure or attachment. The first of the Special Accounts (Special Account A) shall be used exclusively for Part A of the Project, and the second Special Account (Special Account B) shall be used exclusively for Part B of the Project. Deposits into, and payments out of, the Special Accounts shall be made in accordance with the provisions of Schedule 5 to this Agreement.

Section 2.03. The Closing Date shall be December 31, 2001 or such later date as the Association shall establish. The Association shall promptly notify the Borrower of such later date.

Section 2.04. (a) The Borrower shall pay to the Association a commitment charge on the principal amount of the Credit not withdrawn from time to time at a rate to be set by the Association as of June 30 of each year, but not to exceed the rate of one-half of one percent (1/2 of 1%) per annum.

(b) The commitment charge shall accrue: (i) from the date sixty days after the date of this Agreement (the accrual date) to the respective dates on which amounts shall be withdrawn by the Borrower from the Credit Account or canceled; and (ii) at the rate set as of the June 30 immediately preceding the accrual date and at such other rates as may be set from time to time thereafter pursuant to paragraph (a) above. The rate set as of June 30 in each year shall be applied from the next date in that year specified in Section 2.06 of this Agreement.

(c) The commitment charge shall be paid: (i) at such places as the Association shall reasonably request; (ii) without restrictions of any kind imposed by, or in the territory of, the Borrower; and (iii) in the currency specified in this Agreement for the purposes of Section 4.02 of the General Conditions or in such other eligible currency or currencies as may from time to time be designated or selected pursuant to the provisions of that Section.

Section 2.05. The Borrower shall pay to the Association a service charge at the rate of three-fourths of one percent (3/4 of 1%) per annum on the principal amount of the Credit withdrawn and outstanding from time to time.

Section 2.06. Commitment charges and service charges shall be payable semiannually on April 1 and October 1 in each year.

Section 2.07. (a) Subject to paragraphs (b), (c) and (d) below, the Borrower shall repay the principal amount of the Credit in semiannual installments payable on each April 1 and October 1 commencing April 1, 2011 and ending October 1, 2040. Each installment to and including the installment payable on October 1, 2020 shall be one percent (1%) of such principal amount, and each installment thereafter shall be two percent (2%) of such principal amount.

(b) Whenever: (i) the Borrower's per capita gross national product (GNP), as determined by the Association, shall have exceeded for three consecutive years the level established annually by the Association for determining eligibility to access the Association's resources; and (ii) the Bank shall consider the Borrower creditworthy for Bank lending, the Association may, subsequent to the review and approval thereof by the Executive Directors of the Association and after due consideration by

them of the development of the Borrower's economy, modify the repayment of installments under paragraph (a) above by: (A) requiring the Borrower to repay twice the amount of each such installment not yet due until the principal amount of the Credit shall have been repaid; and (B) requiring the Borrower to commence repayment of the principal amount of the Credit as of the first semiannual payment date referred to in paragraph (a) above falling six months or more after the date on which the Association notifies the Borrower that the events set out in this paragraph (b) have occurred, provided, however, that there shall be a grace period of a minimum of five years on such repayment of principal.

(c) If so requested by the Borrower, the Association may revise the modification referred to in paragraph (b) above to include, in lieu of some or all of the increase in the amounts of such installments, the payment of interest at an annual rate agreed with the Association on the principal amount of the Credit withdrawn and outstanding from time to time, provided that, in the judgment of the Association, such revision shall not change the grant element obtained under the above-mentioned repayment modification.

(d) If, at any time after a modification of terms pursuant to paragraph (b) above, the Association determines that the Borrower's economic condition has deteriorated significantly, the Association may, if so requested by the Borrower, further modify the terms of repayment to conform to the schedule of installments as provided in paragraph (a) above.

Section 2.08. The currency of the United States of America is hereby specified for the purposes of Section 4.02 of the General Conditions.

ARTICLE III

Execution of the Project

Section 3.01. (a) The Borrower declares its commitment to the objectives of the Project as set forth in Schedule 2 to this Agreement, and, to this end, without any limitation or restriction upon any of its other obligations under the Development Credit Agreement, shall (i) carry out Part A of the Project through EECC with due diligence and efficiency and in conformity with appropriate financial, technical, environmental and administrative practices and shall provide promptly as needed, the funds, facilities, services and other resources required for the Project; and (ii) cause KenGen and KPLC to perform in accordance with the provisions of the Project Agreement all the obligations of KenGen and KPLC therein set forth, shall take and cause to be taken all action, including the provision of funds, facilities, services and other resources, necessary or appropriate to enable KenGen and KPLC to perform such obligations, and shall not take or permit to be taken any action which would prevent or interfere with such performance.

(b) Without limitation upon the provisions of paragraph (a) of this Section and except as the Borrower and the Association shall otherwise agree, the Borrower shall carry out Part A of the Project in accordance with the Implementation Program set forth in Schedule 4 to this Agreement.

(c) The Borrower shall make the proceeds of the Credit allocated to Category (3) of the table in Schedule 1 to the Agreement not exceeding the equivalent of US\$25,000,000 available to KenGen under a subsidiary financing agreement to be entered into between the Borrower and KenGen, under terms and conditions which shall have been approved by the Association which shall include, but without being limited to, the provisions set forth in Part A of Schedule 4 to this Agreement.

(d) The Borrower shall exercise its rights under the Subsidiary

Financing Agreement in such manner as to protect the interests of the Borrower and the Association and to accomplish the purposes of the Credit, and, except as the Association shall otherwise agree, the Borrower shall not assign, amend, abrogate or waive the Subsidiary Financing Agreement or any provision thereof.

Section 3.02. Except as the Association shall otherwise agree, procurement of the goods required for the Project and to be financed out of the proceeds of the Credit shall be governed by the provisions of Schedule 3 to this Agreement.

Section 3.03. For the purposes of Section 9.07 of the General Conditions and without limitation thereto, the Borrower shall take steps, and/or cause KenGen to take steps, to:

(a) prepare, on the basis of guidelines acceptable to the Association, and furnish to the Association not later than six (6) months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Association, a plan for the future operation of the Project; and

(b) afford the Association a reasonable opportunity to exchange views with the Borrower on said plan.

Section 3.04. The Borrower and the Association hereby agree that the obligations set forth in Sections 9.03, 9.04, 9.05, 9.06, 9.07 and 9.08 of the General Conditions (relating to insurance, use of goods and services, plans and schedules, records and reports, maintenance and land acquisition, respectively) shall be carried out by KenGen in respect of Part B of the Project pursuant to Section 2.03 of the Project Agreement.

ARTICLE IV

Financial Covenants

Section 4.01. (a) The Borrower shall maintain or cause to be maintained records and accounts adequate to reflect in accordance with sound accounting practices the operations, resources and expenditures in respect of Part A of the Project of the departments or agencies of the Borrower responsible for carrying out the Project or any part thereof.

(b) The Borrower shall:

(i) have the records and accounts referred to in paragraph (a) of this Section including those for the Escrow Account and Special Accounts for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(ii) furnish to the Association as soon as available, but in any case not later than six (6) months after the end of each such year, the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested; and

(iii) furnish to the Association such other information concerning said records and accounts and the audit thereof as the Association shall from time to time reasonably request.

(c) For all expenditures with respect to which withdrawals from the Credit Account were made on the basis of statements of expenditure, the Borrower shall:

(i) maintain or cause to be maintained in accordance with

sound accounting practices, records and separate accounts reflecting such expenditures;

(ii) ensure that all records (contracts, orders, invoices, bills, receipts and other documents) evidencing such expenditures are retained until at least one year after the Association has received the audit report for the Project Month in which the last withdrawal from the Credit Account was made; and

(iii) enable the Association's representatives to examine such records.

(d) The Borrower shall:

(i) have the records and accounts referred to in paragraph (a) (i) of this Section and those for the Special Accounts for each Project Month audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Association;

(ii) furnish to the Association as soon as available, but in any case not later than 30 days after the end of each Project Month the report of such audit by said auditors, of such scope and in such detail as the Association shall have reasonably requested, including a separate opinion by said auditors as to whether the statements of expenditure submitted during such Project Month, together with the procedures and internal controls involved in their preparation, can be relied upon to support the related withdrawals; and

(iii) furnish to the Association such other information concerning said records and accounts and the audit thereof as the Association shall from time to time reasonably request.

Section 4.02 The Borrower shall ensure that all amounts deposited in the Escrow Account shall be used exclusively: (i) to make payments to IPPs; (ii) for fuel supplies; and (iii) for auditors and experts approved by the Association, in accordance with the Contractual Implementation Framework.

ARTICLE V

Remedies of the Association

Section 5.01. Pursuant to Section 6.02 (1) of the General Conditions, the following additional events are specified:

(a) KenGen or KPLC shall have failed to perform any of its obligations under the Project Agreement.

(b) As a result of events which have occurred after the date of the Development Credit Agreement, an extraordinary situation shall have arisen which shall make it improbable that KenGen or KPLC will be able to perform its obligations under the Project Agreement.

(c) The Memorandum and Articles of KenGen governing the operations of KenGen shall have been amended, suspended, abrogated, repealed or waived so as to affect materially and adversely the ability of KenGen to perform any of its obligations under the Project Agreement.

(d) The Memorandum and Articles of KPLC governing the operations of KPLC shall have been amended, suspended, abrogated, repealed or waived

so as to affect materially and adversely the ability of KPLC to perform any of its obligations under the Project Agreement.

(e) The Contractual Implementation Framework shall have been amended, suspended, abrogated or waived so as to affect materially and adversely the carrying out of the Project and the realization of the objectives thereof.

(f) The Escrow Account has been used for purposes other than those stated in Section 4.02 of this Agreement.

Section 5.02. Pursuant to Section 7.01 (h) of the General conditions, the following additional events are specified:

(a) the event specified in paragraph (a) of Section 5.01 of this Agreement shall occur and shall continue for a period of sixty (60) days after notice thereof shall have been given by the Association to the Borrower; and

(b) the event specified in paragraphs (c) and (d) of Section 5.01 of this Agreement shall occur.

ARTICLE VI

Effective Date; Termination

Section 6.01. The following events are specified as additional conditions to the effectiveness of the Development Credit Agreement within the meaning of Section 12.01 (b) of the General Conditions:

(a) the Subsidiary Financing Agreement has been executed on behalf of the Borrower and KenGen;

(b) the Escrow Account has been opened;

(c) the Borrower has employed, with respect to Part A of the Project, the auditors referred to in Section 4.01 of this Agreement, acceptable to the Association;

(d) KenGen has employed, with respect to Part B of the Project, the auditors referred to in Section 4.01 of this Agreement and in Section 4.01 of the Project Agreement, acceptable to the Association; and

(e) the Borrower has submitted to the Association: (i) a detailed action plan, satisfactory to the Association, for the restructuring of KPLC; and (ii) a public statement, satisfactory to the Association, consistent with the above-mentioned action plan, outlining the Borrower's plan for the restructuring of KPLC.

Section 6.02. The following are specified as additional matters, within the meaning of Section 12.02 (b) of the General Conditions, to be included in the opinion or opinions to be furnished to the Association:

(a) that the Project Agreement has been duly authorized or ratified by KenGen and KPLC and is legally binding upon KenGen and KPLC in accordance with its terms;

(b) that the Subsidiary Financing Agreement has been duly authorized or ratified by the Borrower and KenGen and is legally binding upon the Borrower and KenGen in accordance with its terms; and

(c) that the Contractual Implementation Framework has been duly authorized or ratified by the Borrower, KenGen or KPLC as the case may be and is legally binding upon them in accordance with its terms.

Section 6.03. The date ninety (90) days after the date of this

Agreement is hereby specified for the purposes of Section 12.04 of the General Conditions.

Section 6.04. The obligations of the Borrower under Section 4.01 of this Agreement shall cease and determine on the date on which the Development Credit Agreement shall terminate or on the date fifteen years after the date of this Agreement, whichever shall be the earlier.

ARTICLE VII

Representative of the Borrower; Addresses

Section 7.01. The Minister of the Borrower at the time responsible for finance is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 7.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance
P.O. Box 30007
Nairobi
Republic of Kenya

Cable address:

FINANCE
Nairobi

Telex:

22921
MINFIN-KE

For the Association:

International Development Association
1818 H Street, N.W.
Washington, D.C. 20433
United States of America

Cable address:

INDEVAS
Washington, D.C.

Telex:

248423 (MCI) or (202)
64145 (MCI)

Facsimile:

477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the District of Columbia, United States of America, as of the day and year first above written.

REPUBLIC OF KENYA

By /s/ Felistas Khayumbi
Authorized Representative

INTERNATIONAL DEVELOPMENT ASSOCIATION

By /s/ Callisto Madavo

Regional Vice President
Africa

SCHEDULE 1

Withdrawal of the Proceeds of the Credit

1. The table below sets forth the Categories of items to be financed out of the proceeds of the Credit, the allocation of the amounts of the Credit to each Category and the percentage of expenditures for items so to be financed in each Category:

Category	Amount of the Credit Allocated (Expressed in SDR Equivalent)	% of Expenditures to be Financed
(1) Electric Power purchases required for the Project	22,960,000	100%
(2) Fuel and petroleum products for IPPs required for the Project	13,000,000	100%
(3) Fuel and Petroleum products for KenGen required for the Project	19,140,000	100%
TOTAL	55,100,000	

2. Notwithstanding the provisions of paragraph 1 above, no withdrawals shall be made in respect of payments made for:

(a) expenditures prior to the date of this Agreement, except that withdrawals for an aggregate amount not exceeding the equivalent of SDR 11,100,000, may be made on account of payments made for eligible expenditures before that date but after May 15, 2000; and

(b) expenditures for goods and services supplied under a contract which any national or international financing institution or agency other than the Association shall have financed or agreed to finance or which the Association has financed or agreed to finance under another credit.

3. It is understood that the percentages of expenditures to be financed under the table set forth in paragraph 1 of this Schedule have been calculated on the basis of the provisions of a letter issued by the Borrower's Ministry of Finance pursuant to Legal Notice Number 69 (The Customs and Excise Act, Chapter 472) of the Borrower, which provides for an exemption of taxes and customs duties levied in the territory of the Borrower on works, goods and services for this Project. If any change is made to said letter and Legal Notices which has the effect of levying taxes or customs duties on such works, goods and services, the percentages referred to above shall be decreased in accordance with the provisions of Section 5.08 of the General Conditions.

SCHEDULE 2

Description of the Project

The objective of the Project is to assist the Borrower to address

the current power crisis through the financing of electric power purchases and fuel needed to urgently restore near to normal levels of power supply to industrial, commercial and residential consumers and to sustain macroeconomic performance.

The Project consists of the following parts, subject to such modifications thereof as the Borrower and the Association may agree upon, from time to time, to achieve such objectives:

Part A: Emergency Electric Power

1. Assisting the Borrower in acquiring emergency electric power from IPPs.
2. The acquisition of fuel and other petroleum products for the IPPs' plants.

Part B: Emergency Fuel

Financing utilization of productive capacity through the acquisition of fuel and other petroleum products for KenGen.

* * *

The Project is expected to be completed by June 30, 2001.

SCHEDULE 3

Procurement

Procurement of Goods

Part A: General

1. Goods shall be procured in accordance with the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January and August 1996 and September 1997, and January 1999 (the Guidelines), subject to the modifications set forth in the provisions of the following Parts of this Schedule.

2. In paragraphs 1.6 and 1.8 of the Guidelines, the references to "Bank member countries" and "member country" shall be deemed to be references, respectively, to "Participating Countries" and "Participating Country".

Part B: International Competitive Bidding

Except as otherwise provided in Part C of this Schedule, goods shall be procured under contracts awarded in accordance with the provisions of Section II of the Guidelines and paragraph 5 of Appendix 1 thereto. Paragraphs 2.63 and 2.64 of the Guidelines shall specifically apply to the procurement of power and generation capacity. Fuels shall be procured using the Bank's Standard Bidding Document for the Procurement of Crude Oil/Petroleum Products.

Part C: Limited International Bidding

Six weeks requirement of fuels for the emergency plants shall be

procured under contracts awarded in accordance with the provisions of paragraph 3.2 of the Guidelines, using the Bank's Standard Bidding Document for the Procurement of Crude Oil/Petroleum Products.

Part D: Review by the Bank of Procurement Decisions

Prior Review

With respect to each contract, irrespective of contract value, the procedures set forth in paragraphs 2 and 3 of Appendix 1 to the Guidelines shall apply.

SCHEDULE 4

Implementation Program

A. Main Provisions of the Subsidiary Financing Agreement

The Subsidiary Financing Agreement shall include, but without being limited to, provisions to the following effect:

(a) the obligation of KenGen to perform all of its obligations under the Project Agreement;

(b) products required for Part B of the Project shall be procured in accordance with the Association's procedures as set forth in Schedule 3 to this Agreement; and

(c) the bearing by KenGen of the cost of fluctuations in the currencies relented to it.

B. Overall Project Implementation

1. General

The Borrower shall maintain policies and procedures adequate to enable it to monitor and evaluate on an ongoing basis, the carrying out of the Project and the achievement of the objectives thereof.

2. EECC

The Borrower shall maintain, until the completion of the Project, the EECC, with functions satisfactory to the Association, and with staff with experience and qualifications satisfactory to the Association. The EECC shall be responsible for supervising the implementation of the Project.

3. EPTT

The Borrower shall maintain, until the completion of the Project, the EPTT with functions satisfactory to the Association, and with staff with experience and qualifications satisfactory to the Association. The Borrower shall cause the EPTT to carry out the technical and financial management of the Project as well as the procurement for IPPs fuel and petroleum products.

4. Quarterly Reviews

The Borrower shall:

(a) not later than the end of the First Project Quarter, and not later than the end of each Project Quarter thereafter, undertake, in conjunction with the Association, KenGen and KPLC, a joint review on all

matters relating to the progress of the Project;

(b) not later than one month prior to each Quarterly Review, furnish to the Association, for its comments, a report in such detail as the Association shall reasonably request, on the progress of the Project; and

(c) following each Quarterly Review, act promptly and diligently in order to take, or assist KenGen and/or KPLC in taking, any corrective action deemed necessary to remedy any shortcoming identified in the implementation of the Project, or to implement, or assist KenGen and/or KPLC in implementing, such measures as may have been agreed upon between the parties in furtherance of the objectives of the Project.

SCHEDULE 5

Special Accounts

1. For the purposes of this Schedule:

(a) the term "eligible Categories" means, in respect of Special Account A for Parts A of the Project, Categories (1) and (2) as set forth in paragraph 1 of Schedule 1 to this Agreement; and in respect of Special Account B for Part B of the Project, Category (3) as set forth in the table in paragraph 1 of Schedule 1 to this Agreement;

(b) the term "eligible expenditures" means expenditures in respect of the reasonable cost of goods required for the Project and to be financed out of the proceeds of the Credit allocated from time to time to the eligible Categories in accordance with the provisions of Schedule 1 to this Agreement; and

(c) the term "Authorized Allocation" means an amount equivalent to \$10 million in respect of Special Account A for Part A of the Project; and to \$10 million in respect of Special Account B for Part B of the Project, to be withdrawn from the Credit Account and deposited into the respective Special Accounts pursuant to paragraph 3 (a) of this Schedule; provided, however that:

(i) in respect of Special Account A, for Part A of the Project, unless the Association shall otherwise agree, the Authorized Allocation to be disbursed on the Effective Date shall be limited to an amount equivalent to US\$10 million; and

(ii) in respect of Special Account B for Part B of the Project, unless the Association shall otherwise agree, the Authorized Allocation to be disbursed on the Effective Date shall be limited to an amount equivalent to US\$10 million.

2. Payments out of the respective Special Account shall be made exclusively for eligible expenditures in accordance with the provisions of this Schedule.

3. After the Association has received evidence satisfactory to it that the respective Special Account has been duly opened, withdrawals of the Authorized Allocation and subsequent withdrawals to replenish the respective Special Account shall be made as follows:

(a) For withdrawals of the Authorized Allocation, the Borrower shall furnish to the Association a request or requests for deposit into the respective Special Account of an amount or amounts which do not exceed the aggregate amount of the Authorized Allocation. On the basis of such request or requests, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount or amounts as the Borrower shall

have requested.

(b) (i) For replenishment of the respective Special Account, the Borrower shall furnish to the Association requests for deposits into the respective Special Account at such intervals as the Association shall specify.

(ii) Prior to, or at the time of, each such request, the Borrower shall furnish to the Association the documents and other evidence required pursuant to paragraph 4 of this Schedule for the payment or payments in respect of which replenishment is requested. On the basis of each such request, the Association shall, on behalf of the Borrower, withdraw from the Credit Account and deposit into the respective Special Account such amount as the Borrower shall have requested and as shall have been shown by said documents and other evidence to have been paid out of the respective Special Account for eligible expenditures. All such deposits shall be withdrawn by the Association from the Credit Account under the respective eligible Categories, and in the respective equivalent amounts, as shall have been justified by said documents and other evidence.

4. For each payment made by the Borrower out of the respective Special Account, the Borrower shall, at such time as the Association shall reasonably request, furnish to the Association such documents and other evidence showing that such payment was made exclusively for eligible expenditures.

5. Notwithstanding the provisions of paragraph 3 of this Schedule, the Association shall not be required to make further deposits into any Special Account:

(a) if, at any time, the Association shall have determined that all further withdrawals should be made by the Borrower directly from the Credit Account in accordance with the provisions of Article V of the General Conditions and paragraph (a) of Section 2.02 of this Agreement;

(b) if the Borrower shall have failed to furnish to the Association, within the period of time specified in Section 4.01 (b) (ii) of this Agreement, any of the audit reports required to be furnished to the Association pursuant to said Section in respect of the audit of the records and accounts for the Special Accounts;

(c) if, at any time, the Association shall have notified the Borrower of its intention to suspend in whole or in part the right of the Borrower to make withdrawals from the Credit Account pursuant to the provisions of Section 6.02 of the General Conditions; or

(d) once the total unwithdrawn amount of the Credit allocated to the eligible Categories for Special Account A (in respect of Part A of the Project) and Special Account B (in respect of Part B of the Project), respectively, minus the total amount of all outstanding special commitments entered into by the Association pursuant to Section 5.02 of the General Conditions, in respect of Part A on one hand, and Part B on the other hand, shall equal the equivalent of twice the amount of the Authorized Allocation.

Thereafter, withdrawal from the Credit Account of the remaining unwithdrawn amount of the Credit allocated to the eligible Categories for Part A of the Project on one hand, and Part B of the Project, on the other hand, shall follow such procedures as the Association shall specify by notice to the Borrower. Such further withdrawals shall be made only after and to the extent that the Association shall have been satisfied that all such amounts remaining on deposit in the respective Special Account as of the date of such notice will be utilized in making payments

for eligible expenditures.

6. (a) If the Association shall have determined at any time that any payment out of any Special Account: (i) was made for an expenditure or in an amount not eligible pursuant to paragraph 2 of this Schedule; or (ii) was not justified by the evidence furnished to the Association, the Borrower shall, promptly upon notice from the Association: (A) provide such additional evidence as the Association may request; or (B) deposit into the respective Special Account (or, if the Association shall so request, refund to the Association) an amount equal to the amount of such payment or the portion thereof not so eligible or justified. Unless the Association shall otherwise agree, no further deposit by the Association into any Special Account shall be made until the Borrower has provided such evidence or made such deposit or refund, as the case may be.

(b) If the Association shall have determined at any time that any amount outstanding in any Special Account will not be required to cover further payments for eligible expenditures, the Borrower shall, promptly upon notice from the Association, refund to the Association such outstanding amount.

(c) The Borrower may, upon notice to the Association, refund to the Association all or any portion of the funds on deposit in the Special Accounts.

(d) Refunds to the Association made pursuant to paragraphs 6 (a), (b) and (c) of this Schedule shall be credited to the Credit Account for subsequent withdrawal or for cancellation in accordance with the relevant provisions of this Agreement, including the General Conditions.

